PRESERVED

6948

App. F. IX-4]

1940-41

Legn File No.

Serial Nos. (1615)

Previous References.

P.P. 44-36 (1, 2)

Later References.

G.W 87-43-1-10

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Fifteen only

Part B for Nov 1941

SUBJECT.

The Code of Civil procedure (amendment) Bill
(Sections 84, 85 and 86)

WD 03999—GPB—500—11-9-41

Ordered that the question matter of the proposed legislation may be dropped for the present

urgent Legis 61-40-1 4216 Pol 2276 CB

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. Pol.47-40.

General and Secret

FROM

THE SECRETARY
TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

Dated Bangalore, the 13th January 1941

Secret

1st member & Dewan MK 18/1

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

SIR, 14/1/41

I am directed to refer to your letter No.2626 C.B. dated the 24th December 1940 and to state that the Political Department have telegraphed that the Government of India are of opinion that it is desirable that the Mysore Government should make specific provision on the lines of section 84 of the British Indian Code of Civil Procedure. The Hon'ble the Resident would be grateful if the Mysore Government would kindly take action accordingly.

CB MK 18/1

[illegible]
[illegible]
JAN 15 1941
No. 7083

I have the honour to be,
Sir,
Your most obedient servant,

SECRETARY TO THE RESIDENT.

1) Sent to the Development Secretary for perusal. This will be sent to the Law Secretary for necessary further action.

CB 15/1

2) Yes MK 15/1/41

Sent CB 15/1

3) Law Secy.) A draft may be put up early.

Hm 2/1/41

MK 16/1

NOTE—Contn. Sheet.

4.2.16
D

Code of Civil Procedure (amendment) Bill.

General and Revenue Secretariat | File No. | of 194 | [App. F. III-2

Serial No.

4) Draft of a Bill amending the C.P.C. is put up. Only sections 84 and 85 are sought to be added to the C.P.C. on the lines of the corresponding section of the British Indian Code. The effect will be to confer on any Government or Foreign State recognised by His Highness the Maharaja a right to sue in any court in Mysore.

5) The question whether a corresponding right to sue such foreign Government or State in Mysore should be given to Mysore subjects (similar to section 86 of the Br. Indian Code.) arises for consideration. Since the right of suit given to a foreign State is in respect of a private right, it would perhaps be equitable to grant a corresponding remedy to private persons. It would be anomalous for instance in the case of contract entered into in Mysore between the Government of India and a Mysore subject that the former should have the right to sue on the contract and not the latter.

6) The Residency have been informed already that we are agreeable to have legislation on the lines of ~~xxxixx~~ sections 84 (and 85) If an Emergency Act has to be passed it may perhaps be limited to sections 84 and 85 and by the time that a Bill is drafted for introduction in the Assembly and Council the question will be examined in greater detail and the opinion of the Residency also obtained.

Submitted for orders.

Sns
19/3/41

7) The draft as corrected may be approved. It does not appear to be necessary to mention the Govt of India specifically by name, since the word "foreign state" is wide enough to include it.

8) The Bill may be promulgated

NOTE—Contn. Sheet.

Bill to amend the Code of Civil Procedure

File No. of 194 | General and Revenue Secretariat

Serial No.

the matter is urgent, as an emergency measure under section 81 of the Govt of Mysore Act.

c/ the questions for consideration a result on Mysore decree to sue the Govt in Govt Court in Govt Court as result of suit in Mysore, may be examined in consultation with the Govt of India, if necessary.

Law Secy

'A'

It seems desirable to incorporate in our Act the provisions similar to SS. 86 & 87 of C. P. Code in for. India, so as to remove the doubts suggested at 'A'.

This may be passed as an Emergency Act.

This is a Council matter and may be disposed of by Circulation.

I Member)
Dewan)

Hm 18/3/41

19-3

Hm 19/3

10,

Mr 19-3-41

Chief Secy
Mr)

Hm 20/3

Hm 24/3

Signed
24/3

GOVERNMENT'S OFFICE
... 1941
6/1 S

For Disposal by Circulation. **No. C. 4879/1940-41**

.....193.....

GENERAL AND REVENUE SECRETARIAT

Council Matter.

Subject

Bill to further amend the Code of Civil Procedure 1911.

Circulated to the Members of Council.

By Order,

15) [signature]

21st March 1941. *Chief Secretary to Government.*

9493
21.3.41.

First Member of Council. 16) Please see remarks on the file
22/3/41

Second Member of Council. (Seen)

Law Secy with compliments
24.3.41

24/3/41

Code of Civil Procedure (amendment) Bill

Serial No.

17 The draft bill may be sent demi officially to the Registrar of the High court with the request that Govt may be favoured with the suggestions if any of the Judges the need for the amendment may be briefly explained

NLL
21/3/41

Hm
2
24/3/41

18) Revised draft incorporating section 86 and 87 a&b as ordered at para 10 abv

A draft to the Registrar High Court explaining briefly the need for the amendment is put up for orders.

Sow
25.8.41
Bow

19) NLL 25/3

Law Secy

20) Hm
2
25/3/41.
NLL 25/3

6/5/43

Issued P 4836 d 26.3.41 to the Registrar High Court & papers.

21) A draft reminder to the High Court is put up.

Sow
16.5.41

22) Issue
BKR
16.5.41

Issued P 5825 d 17.5.41 to the Registrar High Court & papers

from
the Registrar High Court
ROC 1144-40-G dated 14.6.41
stating that the opinions of the Judges will be sent early

23) Submitted for perusal the final opns will be in arrears

Sow
2.7.41

24) BKR
2.7.41

NOTE—Contn. Sheet.

Code of Civil Procedure (amendment) Bill

File No. 51/[illegible] of 194 . | General and Re Secretariat

Serial No.

From

The Registrar, High Court of Mysore

No. D, Dis 20/41-42 dated 17-7-41

forwarding the opinion of the Judges

VS) Reference is invited to para 17 of the notes A copy of the Bill was accordingly sent to the High Court for the opinion of the Judges. It is now stated that the Judges are not agreed about the necessity, desirability or effect of the proposed amendment and no opinion or suggestion can therefore be expressed by the High Court.

26) In their letter of the 13th January the Residency stated that the Government of India were of the opinion that specific provision should be made on the lines of section 84 of the British Indian Code and requested that action may be taken. Accordingly.

In these circumstances it is for orders if the Bill has to be Proceeded with

Sd/-
23/7

Law Secy)

SECRETARIAT
23 JULY 1941
GOVT OF MYSORE

Submitted with respect to para 17 supra.

The High Court have not expressed any opinion about the amendment. The amendment would provide for an additional relief, which may be availed of by the foreign States or Governments, if an occasion should arise. However the Residency may be consulted whether the Govt of India would still insist on this amendment as they have now become a partner

Serial No.

in the Hindustan Aircraft Co dtd. Perhaps, there may not be any necessity for the Government of India to resort to this section, if they choose to seek redress in any civil Court in Mysore in connection with any contract or relationship with that company.

OFFICE OF THE MINISTER FOR LAW
JUL 26 1941
No 837

Minister for Law + Dewan) 27) 26/7 Hm 25/7/41. JMW 25/7

30) The necessity of the High Court to give an agreed upon this question recently arises from the fact that some of the judges feel that the suggested amendment is too wide in its terms. If this amendment were adopted any minor foreign State might take advantage of the provision. But if the decree went against it, there would be no means of satisfaction which the Mysore courts could enforce. It is true that to come within the purview of the new section, the foreign state concerned should be recognised by H.H. the Maharaja. But this might or might not be prove to be a sufficient safeguard to secure prompt satisfaction of decrees passed by Mysore courts.

31) It would I think meet the

TE—Contn. Sheet

Govt of Coorg (Income Tax) amendment Bill.

5

File No. of 194 | General and Revenue Secretariat

Serial No.

the requirements of the case
~~of the Govt~~ if the right to sue
be sued was granted to the Govt of Coorg
An amendment in regard from calculated to
give effect to this effect may please be
drafted

37

29/5/41

30-5-41

Hon
2
30/7/41.

A revised draft Bill limiting its scope in the manner ordered at para 31 above is put up.

The expression "Govt. of Coorg" has been used in the Bill as it appears to be the proper expression to be used.

The first proviso to sub section (1), of and sub section (2) of section 84 appear to be unnecessary and have been omitted.

) 91 is for orders whether the High Court should be Consulted again on the revised Bill or action may be taken to proceed with it.

½) In the latter case, it is for Consideration whether may be promulgated as an Emergency measure in the first instance, action also being taken to place it before the Leg. Co during their ensuing sessions.

Hon
31/7

37)

Secy
RA & Sc.)

Law Secy)

GOVT OF MYSORE

57/R

Code of Civil Procedure (amendment) Bill.

neral and Revenue Secretariat
R. A. & L. C.

File No. of 194 [App. F. III-2

Serial No.

35) An alternative draft as instructed by the Law Secy is

SECT. LAW DEPT. 7 AUG 1941 GOVT OF MYSORE

OFFICE OF THE MINISTER FOR LAW AUG 6 1941 No 12 83

41) This file may be sent to the Registrar of the High Court unofficially for his obtaining an opinion of the Chief Justice & judges of the High Court on the present draft Bill, in the light of the G.O.I's view that such legislation is necessary to protect their interests.

6.8.41

Letter since received from the Registrar and reply thereto are now Placed in the file.

9/8/41

42) 7/8/41

8/8/41.

44) Forwarded with compliments to the Registrar, High Court of Mysore, with reference to paras 41 & 42 of the notes.

By Order,
Secretary to Government,
Law Department.

REGISTRAR-HIGH COURT 11 AUG. 1941 OF MYSORE.

NOTE—Contn. Sheet.

WD 01925—GPB—1,000—4-5-41

57/LC

File No. of 194

General nd Revenue Secretariat
R. A. & L. C.

Serial No.

Dis Dis 6-11-41-42.

4th Court
30 August 1941

45) Returned with compliments to the Secretary to Government Law Department. Copies of the minutes made by the Judges on the subject are enclosed.

V Thimmiengar
Regr Hcr.

SECY. LAW DEPT.
30 AUG. 1941
GOVT OF MYSORE

Hm
30/8/41.

Mys Secy
Jelis
tlc

46 The opinions of the Chief Justice and the Judges of the High Court have been received.

47 The Chief Justice and Rajadharmaprasakta Mr. Justice H.K. Narasimha Iyer while Considering that such a Bill is unnecessary for the purposes of the Govt. of India, have stated that the present Bill is much less open to objection.

48 The Judges have made the following suggestion for Change in the Bill.

In Mulk Mr. Justice Abdul Ghani and Justice Narasimha Iyer suggest that "the Secretary of State in India in Council" may be used instead of "the Government of India" in

Code of Civil Procedure (Amendment) Bill.

eneral and Revenue Secretariat
R. A. & L. C.

File No. of 194 . [App. F. III-2

57/M

Serial No.

52 The expression 'Govt of India' may remain' throughout this Bill

BKR 2.9.41

51) Re 8/9

53) I agree

57) BKR 2-9-41 "of Mysore" may be added at the end as in S.84.

52) Re 8/9 Hm 6/9/41

52) The words may remain BKR 2.9.41

55) Re 8/9

55) The existing provision follows the British Indian Act and may remain BKR 2-9-41

54) Re 8/9

[illegible] 1/9/41

[illegible] Secy RA Dept)

57) BKR 2.9.41

Law Secy

58) The High Court are in favour of

SECY. LAW DEPT. GOVT.

NOTE—Contn. Sheet.

WD 01925—GPB—1,000—4-3-41

Code of Civil Procedure (amendment) Bill

File No. of 194 . | General and Revenue Secretariat R. A. & L. C.

Serial No.

the amended Bill containing ss 86 to 87. The suggestions of the Judges in regard to the form of the Bill have been discussed above.

5(a) The Bill may be placed in the next Session of the R.A.

(b) This is a Commerce matter, and may be disposed of by circulation.

Minister for Law & Revenue)

Hm 2 6/9/41. 6.9.41

(c) Put up 8-9-41

DEPUTY ... No 1949

OFFICE OF THE MINISTER FOR LAW SEP 8 1941 No 2196

6) Yes. At the same time a copy of the bill may be sent to the Revenue for remarks if any

Draft Submitted 9/9 Issued BKR 9941

Revd. 8/9/41

7) For favour of circulation

Chief Secy to Govt.

Hm 2 8/9/41. BKR 9941

Submitted with a circulation memo Put up 10/9/41 Signed M 10/9/41

For Disposal by Circulation.

No. C. 224

of 1941-42

GENERAL AND REVENUE SECRETARIAT

Council Matter.

Subject

The Code of Civil Procedure (Amendment) Bill.

Circulated to the Council of Ministers.

Order,

/W Wijesundara

10th September 1941. *Chief Secretary to Government.*

1388/10.9.41 **Minister for Finance and Revenue.** 68) /Kc 11.9.41

Minister for Law (Seen)

1713/11.9.41 **Minister for Education.** 69) JHP 11.9.41

1516/12.9.41 **Minister for Local Self-Government and Public Health.** 70) JHS. 13.9.41

Law Secy. with Compliments

~~Draft Submitted~~

Dons 15.9.41

MS 13/9

Hm 13/9/41

RKR 15.9.41

Code of Civil Procedure (amendment) Bill.

General and Revenue Secretariat R. A. & L. C. | File No. | of 194 S I/N | [App. F. III-2

Serial No.

DEWAN'S OFFICE 19 SEP 1941 2425

A Statement of general principles and a D.F.N. are to be submitted.

Sons 15.9.41

Secy (RA & Le) BDKR 16.9.41

SECY. LAW DEPT. 16 SEP 1941 GOVT OF MYSORE

Law Secy)

No Statement of principles may be approved.

OFFICE OF THE MINISTER FOR LAW SEP 17 1941 No 2692

D.F.N. submitted

Minister for Law) Hm 16/9/41.

F.N. signed by Minister BDKR 16.9.41

Hm 16/9

S.N. submitted

Dewan) Hm 17.9.41. BDKR 18.9.41

NOTE—Contn. Sheet.

WD 01925—GPB—1,000—4-3-41

File No. of 194

General and Reven...
Secretariat
R. A. & L. C.

Serial No.

Final Note by the Minister for Law

Subject.-

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Provisions of the British Indian Code of Civil Procedure - relating to the right of suit and the liability to be sued, of foreign States have not been introduced in Mysore. In connection with the formation of the Hindustan Air Craft Company, Limited., in which the Government of India are interested, the question arose whether that Government had a right of suit to enforce a private right although - there were no provisions in the Mysore Code to that effect. The Government of India have expressed the opinion that it is desirable that specific provision should be made in the Mysore Code of Civil Procedure. The Judges of the High Court who were consulted unofficially in the matter have generally expressed themselves in favour of the Bill which has been drafted for this purpose.

It is proposed to place the Bill before the Representative Assembly in October and to introduce it thereafter in the Legislative Council.

The Dewan and the other Ministers are agreeable to these proposals. I solicit the gracious sanction of His Highness to the proposals.

Bangalore,
17th September 1941.

MINISTER FOR LAW.

Submitted to His Highness.

I submit herewith a Final Note by the Minister for Law on the subject of the proposal to place before the Representative Assembly at its next session the Code of Civil Procedure (Amendment) Bill, for His Highness's gracious sanction.

N. Madhava Rau

Bangalore, D.E W A N.

19th September 1941.

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Proposal to place before the Representative Assembly at its next session the Code of Civil Procedure (Amendment) Bill.

Order.

VRW
21/9/41.

NO. 236

4.10.41

3/10/41

General and Revenue

Secretariat.

e 2nb.

SUBJECT:—

Proposal to place before the Representative Assembly at its next session the Code of Civil Procedure (Amendment) Bill.

(*)

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Council of Ministers for perusal of His Highness' orbers before/after issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.) (*)

Chief Secretary to Government.

Through the Secretary to Government,

Law Department. 4.10.41

1985 / 5.10.41 Minister for Finance and Revenue. 7.10

3318 / 5/10/41 Minister for Law. 5-10-41

2127 / 7.10.41 Minister for Education. 6.10.41

2076 / 7-10-41 Minister for Local Self-Govt. and Public L... 8.10.41

Law Secy. with compliments.

NOTE.—Contn. sheet

WD 2201—GPB—100—5-6-41

9/10/41

9/10/41

Code of Civil Procedure (amendment) Bill

General and Revenue Secretariat
R. A. & L. C.

File No. 262/13 of 194 .

[App. F. III-2

Serial No.

From

The Secretary to the Hon'ble the Resident

Pol 47-40 dated 19th September 1941

re the Bill to amend the Code of Civil Procedure Code.

The main file has been submitted with a D.S.R.

by the Law Secy

As instructed &c draft rules & put up. After views of Govt thereon received by the Residency will be worked up.

23-9-41

Secy

Rev Secy)

BVR

23.9.41

SECY. LAW DEPT
24 SEP. 1941
GOVT OF MYSORE

Law Secy)

Hon'ble

24/9/41

D/Hon'ble BVR

24.9.41

24.9.41

Issued Pol 556 dated 25th September 1941 by the Residency

From

The Secretary to the Hon'ble the Resident

Pol 47-41 dated 24.9.41.

Stating that Legislation may be Confined to Section 84 only

The Bill as placed before the Assembly Proposes the addition to our C.P.C. of Provisions similar to Sections 84-87 of the British Indian Code.

The Residency was intimate that the

Hon'ble R.

NOTE—Contn. Sheet.

WD 01925—GPB—1,000—4-3-41

File No. of 194

General and Reven Secretariat R. A. & L. C.

Serial No.

Government of India desire legislation on the lines of S 84 Only as proposed

S 84 gives the Govt. of India power to sue in Foreign Courts.

But in accordance with principles of international law an absolute Privilege is enjoyed by independent Sovereigns not to be sued unless with his Consent In British India as a result of S 86 such a Privilege is modified to a certain extent and he Cannot be sued if the Prior Consent of the Governor General in Council is obtained. In Regard to omitting to add provisions Corresponding to S 86 the unconditional Privilege would be the Law, Right now and addition of S 84 will give them a right to sue

From the opinion of the Judges of the High Court in the Bills sent to them, it is seen that they have appeared to assume that it is the longer Bill that is going to be considered. In fact Mr. Justice Subrahmanya Ayyar has specifically stated that he is in favour of the longer Bill. Mr. Justice Sir Gangadhar Mudholkar appears to be of the same view.

Flag S

No doubt in our letter to the Residency reference was made only to S 84. But from the wording of that letter, it could be reasonably urged that it was for our

Flag V

Code of Civil Procedure (amendment) Bill

General and Revenue Secretariat
R. A. & L. C.

File No. 262/41 of 194 .

App. F. III-2

Serial No.

DEWAN'S OFFICE
4. NOV. 1941
NO 3693

intention to limit legislation only to S 84 but that S 84 was mentioned as the right of one was the only subject that was required consideration.

The question of the extent to which legislation in the L.C has to be undertaken is for orders

30/10/41

Law Secy)

The Residency desires to limit the legislation to S. 84 only. Hence the Bill may be ~~xxxx~~ confined to S. 84 C.P.C. only.

Minister) in Law)

Hm 2 30.10.41.

Dewan)

30-10-41

30-10-41

It was stated in the R.A. that the arrangements contemplated full reciprocity. If no provision is made for suits against the Govt of India even to the limited extent contemplated in the Bill, there may be opposition to the measure. It is better to explain the position to the Residency and ~~xxxx~~ ~~xxxx~~ ~~xxxx~~

4/11

4/11/41

5/11/41

NOTE—Contn. Sheet.

Code of Civil Procedure (amendment) Bill

File No. 262/RL of 194 .

General and Revenue Secretariat
R. A. & L. C.

Serial No.

A draft letter to the Residency on the lines suggested in the Dewan's minute above is put up for consideration.

A copy of the proceedings in the Rst. on the Bill is also put up for perusal

6.11.41

Law Secy)

For perusal before issue

Law Minister)
& Dewan)

6.11.41.
6.11.41

8/11

A revised draft is put up for approval.

Dewan)

11/11/41

3959

12/11/41

Minister)
for Law.

12/11/41.
12.11.41

13/11

14.11.41

14.11.41

Issued Vide 277 dt 15.11.41 to the Residency.

SECY. TO GOVT
6 NOV 1941
GOVT OF MYSORE

NOV 18 1941
No. 4691

The Code of Civil Procedure (amendment) 1941.

General and Revenue Secretariat
R. A. & L. C.

File No. 262/Ne of 194

App. F. III-2

Serial No.

DEWAN'S OFFICE
24. NOV. 1941
NO 4380

SECY. LAW DEPT.
15 NOV. 1941
GOVT OF MYSORE

The letter to the Residency has issued.

The last date for publication of a Bill under rule 36 being 4th December 1941, the reply from the Residency will be awaited before taking further action in the matter.

15.11.41

Law Secy)

Hm
2
15.11.41

Please bring up in lost week of this month when reply may be received. In meanwhile

MRV

15.11.41

From

The Secretary to the Resident

Letter No. Pol. 47-40 Dated 21-11-1941.

With reference to the letter referred to above stating that for reasons explained the matter of the proposed legislation may be dropped.

Submitted for orders with the Connected papers.

MRV.
24-11-41.

The Bill may perhaps be dropped

24/11

Law Secy)

OFFICE OF THE MINISTER FOR LAW
NOV 25 1941
No S V 01

The Bill may be dropped

Dewan)

Hm
2
24.11.41.

25/11/41

Minister for Law)

25.11

Hm
2
25.11.41.

NOTE—Contn. Sheet.

MRV

Hm
2
26.11.41.

26/11/41

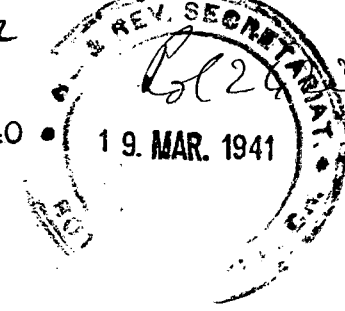
26.11.41

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

3378/P

Legis 62-L0.2

NO. Pol.47-40 •



FROM

THE SECRETARY
TO THE HON'BLE THE RESIDENT IN MYSORE.

TO

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

Dated Bangalore, the 18th March *194*.

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

SIR,

I am directed to refer to my letter No.Pol.47-40, dated 13th January 1941 and to state that the Government of India have telegraphed asking for an urgent reply as to whether the legislation in question has yet been enacted by the Mysore Government.

2. Since the matter is evidently considered by the Government of India to be one of urgent importance the Hon'ble the Resident would be grateful if the Mysore Government would take steps to enact emergency legislation which could subsequently be placed before the

Legislatures

Legislatures in due course.

I have the honour to be,
Sir,
Your most obedient servant,

G Macaulay.

SECRETARY TO THE RESIDENT.

Legis 62-40 8

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. Pol.47-40

FROM

THE SECRETARY
TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department, Bangalore.

SECY. LAW DEPT. 6 AUG. 1941 GOVT OF MYSORE

Dated Bangalore, the 6th Aug. 1941.

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

- - - -

SIR,

I am directed to refer to the correspondence ending with your letter No.Pol.1652/Legis-40, dated the 19th March 1941, and to enquire whether the -- legislation in question has since been enacted.

I have the honour to be,
Sir,
Your most obedient servant,

for SECRETARY TO THE RESIDENT.

The file relating to the Bill has been submitted for orders to the Minister for Law today with 2 alternative drafts.

6/8/

(Law Secy) A reply may be sent that the matter is under the active consideration of Government

Minister for Law

8/8/41.

Draft and form of a letter to the Residency is sent up for approval

9/8/41.

Issued Pol 279 dt 9.8.41 to the Residency.

9/8/41

Acc 62-40-3

Immediate

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore. 19th March 1941

No. Pol/652

From

The ~~General~~ Secretary to the Government of His Highness the Maharaja of Mysore.
Law Department.

To

The Secretary to the Hon'ble the Resident in Mysore.

Sir,

Subject:- Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

I am directed to acknowledge receipt of your letter No. Pol. 47-40, dated 18th March 1941 on the above subject and to state that a Bill has been drafted in this matter and the question of promulgating it immediately as an emergency measure is under consideration.

A further reference will be made early as soon as such action is taken.

I have the honor to be,
Sir,
Your most obedient servant.

19/3/41

Secretary to Government,
Law Department.

Rol 1652 d 19th March 1941

To

The Secretary to the Hon'ble the
Resident in Mysore.

Subject:- Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

Sir,

I am directed to acknowledge receipt of your letter No.Pol.47-40, dated 18th March 1941 on the above subject and to state that a Bill has been drafted in this matter and the question of promulgating it immediately as an emergency measure is under consideration.

A further reference will be made early as soon as such action is taken.

I have etc.

2
19/3/41
Secy. to Govt
Law Dept.

19/3

Legn 62-40:4

No P 4888/me

26th March 1941.

I am desired to send herewith a copy of a draft Bill for amending the Code of Civil Procedure and to request that Government may be kindly favoured with the suggestions, if any, of the Chief -- ustice and the Judges of the High Court.

In connection with the formation of a private company in Mysore in which the Government of India are interested, the question arose whether they had a right of suit to enforce a private right although there was no provision in the Mysore Code of Civil - - Procedure corresponding to section 84 of the British Indian Code. The Government of India have expressed the opinion that it is desirable that specific provision on the lines of section 84 of the British Indian Code should be made in the Mysore Code. The present Bill seeks to serve this purpose.

The favour of a very early reply is requested.

Hm
2
26/3

T. Shamdehgar, Esq., B.A., B.L.,
Registrar, High Court of Mysore,
Bangalore.

I am desired to send herewith a copy of a draft Bill for amending the Code of Civil Procedure and to request that Government may be kindly favoured with the suggestions, if any, of the Chief Justice and the Judges of the High Court

In connection with the formation of a private company in Mysore in which the Government of India ~~were~~ are interested, the question arose whether they had a right of suit to enforce a private right although there was no provision in the Mysore Code of Civil Procedure corresponding to section 84 of the British Indian Code. The Government of India have expressed the opinion that it is desirable that specific provision on the lines of section 84 of the British Indian Code should be made in the Mysore Code. The present Bill seeks to serve this purpose.

The favour of a very early reply is requested.

Hm 2.

T.Shamiengar Esq.,B.A.,B.L., 25/3/41.
Registrar High Court of Mysore.

Bars

Legis 62-40-5

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *19*

Date of issue 17.5.41

Signed by BKR.

List of enclosures.....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No. P 5825

To The Registr

High Court of Mysore, Bangalore.

Sir,

I am directed to invite reference to

do. no P 4838 dated 26th March 1941 sendg

a copy of the draft Bill for amending the

Code of Civil Procedure and to request that

any,

the suggestions, of the Chief Justice and

the Judges of the High Court, ~~if any~~, thereon

may be kindly sent very early.

I am etc

BKR

for Secretary to Govt

Law Dept.

Legi 62-40-5

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 5822 — *Dated, Bangalore,* 17th May 1941.

From

The Secretary to the Government of His Highness
the Maharaja of Mysore,
Law Department.

To

The Registrar,
High Court of Mysore,
Bangalore.

Sir,

I am directed to invite reference to D.O.No.P.4838 dated 26th March 1941 sending a copy of a Draft Bill for amending the Code of Civil Procedure and to request that the suggestions, if any, of the Chief Justice and the Judges of the High Court thereon, may be kindly sent very early.

I have the honour to be,
Sir,
Your most obedient servant,

HKR

for Secretary to Government,
Law Department.

HKR.

Legis 62-40-6 : 7210 pco.
P

R. O. C. No. 1144
~~D. Dis.~~ 40-41.

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore, 13th June 1941. 193
1415

FROM T. Shamiengar, Esq., B.A., B.L.,
~~A. Sundararaja Rao, Esq., B.A., B.L.,~~
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~
Registrar, High Court of Mysore.

SECY. LAW DEPT. 15 JUNE 1941 GOVT OF MYSORE

TO I.V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to the Government of Mysore,
Law Department, BANGALORE.

16/6

5378.

SIR,

With reference to your letter No.P.5825, dated 17 May 1941, regarding the draft Bill for amending the Code of Civil Procedure, I am directed to state that the draft Bill is under the consideration of the Judges and that a final reply will be sent in due course.

I have the honour to be,
Sir,
Your most obedient servant,

T Shamiengar
REGISTRAR.

GRA/-

D. O. D. No. 171/41

HIGH COURT
OF MYSORE,
BANGALORE.

Dated 16th July 1941.

Hm 17/7/41

Dear Mr. Narayana Rao,

In reply to your D.O.No.P.4838/Legislature dated the 26th March 1941 forwarding a copy of a draft Bill for amending the Code of Civil Procedure and requesting that Government may be favoured with the suggestions, if any, of the Chief Justice and the Judges of the High Court, I am directed by the Chief Justice to state that the Judges of the High Court are not agreed about the necessity, desirability or effect of the proposed amendments and therefore it is regretted that no opinion nor suggestion can be expressed by the High Court about them.

Yours sincerely,

T. Ananthanarayana

H.V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to the Government of Mysore,
Law Department, BANGALORE.

Eqn 62-40-10

Pol 44 9811 dt 9th Sept. 1941

The Secretary to the Hon'ble the
Resident in Mysore,

Sir,

Government of India on contract between them and the Hindustan Aircraft, Ltd.

I am directed to invite kind reference to the correspondence ending with my letter No.Pol.279 dated 9th August 1941 on the above subject and to forward herewith for favour of remarks, if any, copy of a bill further to amend the Code of Civil Procedure, 1911, on the lines suggested by the Government of India. I am to add that the Bill will be placed before the Representative Assembly during the ensuing Dasara Session and thereafter in due course before the Legislative Council.

I have etc.

Secretary to Govt.
Law Dept.

9/9

S/44981

9 September 1941.

The

Law Department.

Subject: Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

I am directed to invite kind reference to the correspondence ending with my letter No.Pol.279 dated 9th August 1941 on the above subject and to forward herewith for favour of remarks, if any, copy of a bill further to amend the Code of Civil Procedure, 1911, on the lines suggested by the Government of India. I am to add that the Bill will be placed before the Representative Assembly during the ensuing Dasara Session and thereafter in due course before the Legislative Council.

I have the honour to be,

Sir,

Your most obedient servant,

BKR

For Secretary to Government,
Law Department.

TN-2)

Legis 62-60-11

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. Pol.47-40

SECY. LAW DEPT. 19 SEP. 1941 GOVT OF MYSORE

FROM

THE SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department.

XXX
Hm
2
19/9/41
BAR
19.9.41

Dated Bangalore, the 19th September *1941*.

Subject:- Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft Ltd.

SIR,

With reference to your letter No.Pol.449/R.A. & L.C., dated the 9th September 1941, I am directed to invite attention of the Government of Mysore to the fact that the Government of India only asked for legislation on the lines of section 84 of the British Indian Code of Civil Procedure as stated in my lett No.Pol.47-40, dated the 13th January 1941, whereas the Bill forwarded with your letter under reference goes much farther, and also to the fact that this Residency has been given only about a fortnight in which to consult the Government of India. The Bill is being forwarded to the Government of India for comment but cannot be received back before the Dasara Session. I am to ask that meanwhile the Government of Mysore will kindly only legislate in respect of section 84. In this connection I am to invite attention to letter from the Government of Mysore No.2626/C.B., dated the 24th December 1940.

I have the honour to be,
Sir,
Your most obedient servant,

SECRETARY TO THE RESIDENT.

Draft. Pol 55-6

~~23rd~~ 24 September 1941.

The Secretary to the Hon'ble the Resident,

B a n g a l o r e.

Sir,

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft Ltd.

I am directed to acknowledge your letter No.Pol.47-40, dated 19th September 194 on the above subject and to state that by placing the Bill before the Assembly, Government are not committed to enact the measure as so placed into law. ~~They~~ The Govt can also omit such portions of the Bill as they may think proper before the Bill is introduced in the Legislative Council.

I am to add that the question of the extent to which the Code of Civil Procedure has to be amended for the purposes in view ~~is under the consideration of the Government~~ may be still reconsidered in the light ~~and that the receipt of~~ of the opinion of the Government of India ~~will be awaited~~ which will be awaited.

I have etc.,

Hm
24/9/41.

Secy. to Government,
~~Law~~ Law Department.

Pol
23-9-41

Legis 62-40-12

25th September 1941

Kl 556

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

Sir,

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft Ltd.

I am directed to acknowledge your letter No.Pol.47-40, dated 19th September 1941 on the above subject and to state tha by placing the Bill before the Assembly, Government are not committed to enact the measure as so placed into law. The Government can always omit such portions of the Bill as they may think proper before the Bill is introduced in the Legislative Council.

I am to add that the question of the extent to which the Code of Civil Procedure has to be amended for the purposes in view may be still reconsidered in the light of the opinion of the Government of India which will be awaited.

I have the honour to be,
Sir,
Your most obedient servant.

2.79(41)

Secretary to Government,
Law Department.

Legis 62-40-13

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. Pol.47-40

FROM

THE SECRETARY
TO THE HON'BLE THE RESIDENT IN MYSORE.

Hm 2 25.10.41.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department, Bangalore.

Dated Bangalore, the 24th Octr. *1941*

Subject:- Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft Ltd.

SIR,

I am directed to refer to the correspondence ending with your letter No.Pol.556/Legis., dated the 25th September 1941, and to say that the Government of India desire legislation on the lines of section 84 of the British Indian Code of Civil Procedure only. The Hon'ble the Resident would be glad if the Government of Mysore would agree to promote legislation to that extent only.

I have the honour to be,
Sir,
Your most obedient servant,

SECRETARY TO THE RESIDENT.

For Secretary's not issued

The Secretary to the Hon'ble the Resident
in Mysore, Bangalore.

Sir,

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

.....

I am directed to invite reference to correspondence ending with your letter No. Pol.47-40, dated 24th October 1941, on the above subject and to state that when the Bill, a copy of which was sent to you with this office letter No. Pol.449/R.A. & L.C., dated 9th September 1941, was placed before the Representative Assembly last month, some members of the Assembly raised an objection to the Bill on the ground that it did not contemplate reciprocity in the sense that while the Government of India had a right of suit in Mysore, there was no similar unconditional right in a subject of the State against the Government of India. In view of these discussions in the Assembly, this Government feel that if no provision is made for suits against the Government of India, ~~even to the limited extent~~ as contemplated in the Bill, there is likely to be considerable opposition to ~~the passage of the Bill~~ it being passed in the Legislative Council.

Major objection was to the need for prior sanction/Consent from the Govt of Mysore

As the Bill is drafted ~~as~~ at present, it will be seen that the Government of India are in the same position in Mysore as the Government of His Highness the Maharaja are

in British India and the provisions of the proposed section 86 ~~appear to afford~~ provide ~~sufficient~~ safeguards against any misuse of the ~~limited~~ right of suit against the Government of India given by that section. Under that section, this Government are competent to withhold con___: to any suit against the Government of India in which they feel that the right to sue is not being properly exercised.

I am to request that this position may be kindly explained to the Government of India ~~in which case it is presumed~~ and to express the hope that in the light of this explanation of the position there will ~~be~~ no objection on their part to the introduction of the Bill as drafted ~~at present~~ at Present in the Legislative Council.

I have etc.

6.11.41.

Secy. to Government,
Law Department.

Bs.

Draft

Pol 877
dt 15-11-1941

The Secretary to the Hon'ble the Resident
in Mysore, Bangalore.

Sir,

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

I am directed to invite reference to correspondence ending with your letter No.Pol.47-40, date 24th October 1941, on the above subject and to state the Bill a copy of which was sent to you with this office letter No.Pol.449/R.A.&L.C. dated 9th September 1941 was placed before the Representative Assembly last month and the principles of the Bill were approved by that Chamber.

If the Bill has to be confined to section 84 only, it would be objected to in the Legislative Council on the ground that it will not provide for reciprocity in the sense that while the Government of India have a right of suit in Mysore, there would be no similar right against the Government of India in Mysore. The members of the Representative Assembly ~~did~~ expressed ~~the opinion~~ themselves strongly that there should be complete reciprocity in the sense stated above.

In view of these discussions in the Representative Assembly, this Government feel that the Bill as placed before the Representative Assembly may also be introduced in the Legislative Council.

As the Bill is drafted at present, it will be seen that the Government of India are in the same position in Mysore as the Government of His Highness the Maharaja are in British India and the provisions of the proposed section 86 provide safeguards against any misuse of the right of suit against the Government of India

given by that section. Under that section, this Government are competent to withhold consent to any suit against the Government of India in which they feel that the right to sue is not being properly exercised.

I am to request that this position may be kindly explained to the Government of India and to express the hope that in the light of this explanation of the position they will see no objection on their part to the introduction of the Bill as drafted at present in the Legislative Council.

I have etc.

11.11.41.

Secretary to Government,
Law Department.

KSH

Legn 62-6

14th November 1941.

Pol 877

15-4

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

Sir,

Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

I am directed to invite reference to correspondence ending with your letter No.Pol 47-40, dated 24th October 1941, on the above subject and to state the Bill a copy of which was sent to you with this office letter No.Pol.449/R.A. & L.C. dated 9th September 1941, was placed before the Representative Assembly last month and the principles of the Bill were approved by that Chamber.

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In view of the discussions in the Representative Assembly, this Government feel that the Bill as placed before the Representative Assembly may also be introduced in the Legislative Council.

As the Bill is drafted at present, it will be seen that the Government of India are in the same position in Mysore as the Government of His Highness the Maharaja are in British India and the provisions of the proposed section 86 provide safeguards against any

14.11.41.

misuse of the right of suit against the Government of India given by that section. Under that section, this Government are competent to withhold consent to any suit against the Government of India in which they feel that the right to sue is not being properly exercised.

I am to request that this position may be kindly explained to the Government of India and to express the hope that in the light of this explanation of the position they will see no objection on their part to the introduction of the Bill as drafted at present in the Legislative Council.

I have the honour to be,
Sir,
Your most obedient servant,

14.11.41

Secretary to Government,
Law Department.

SRR

Legis 62-40-15

Confidential

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. Pol.47-40

OFFICE OF THE SECRETARY
24 NOV. 1941
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

FROM

THE SECRETARY
TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department, Bangalore.

Dated Bangalore, the 21st Novr. *1941.*

Subject:- Right of suit in Mysore by the Government of India on contract between them and the Hindustan Aircraft, Ltd.

SIR,

I am directed to refer to your letter No.Pol.877/Legis., dated the 14/15th November 1941, and to say that the Government of India since they have been assured by the Mysore Government that they can file a suit in Mysore to enforce a private right and are also themselves so advised, desire to drop the question.

The Hon'ble the Resident would therefore be grateful if the matter of this proposed legislation could accordingly be dropped.

I have the honour to be,
Sir,
Your most obedient servant,

SECRETARY TO THE RESIDENT.

Act Act further to amend the Code of Civil Procedure, 1911.

WHEREAS the Government of His Highness the Maharaja is satisfied that circumstances exist which render it necessary to take immediate action to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing;

NOW THEREFORE, in exercise of the powers conferred by sub-section (1) of section 31 of the Government of Mysore Act, 1940;

It is hereby enacted as follows:-

Short title and commencement.

1 (1) This Act may be called the Code of Civil Procedure (amendment) Act, 1911.

(2) It shall come into force at once.

Insertion of new sections in Act III of 1911.

2. After section 82 of the Code of Civil Procedure, 1911, the following new sections shall be inserted, namely--

When foreign States may sue.

"84.(1) A foreign State may sue in any Court of Mysore:

Provided, that such State has been recognised by His Highness the Maharaja:

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognised by His Highness the Maharaja."

Persons specially appointed by Govt. to prosecute or defend for Princes or Chiefs.

"85. (1) Persons specially appointed by order of the Government at the request of any State or Sovereign Prince or Ruling Chief and whether residing within or without Mysore, or at the request of any person competent, in the opinion of the Government, to act on behalf of such State Prince or Chief, to prosecute or defend any suit

on his behalf, shall be deemed to be the re... -- recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such State or Prince or Chief

(2) An appointment under this section may be made for the purpose of specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the State or Prince or Chief.

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto."

18/9

Act further to amend the Code of Civil Procedure, 1911.

WHEREAS the Government of His Highness the Maharaja is satisfied that circumstances exist fr which render it necessary to take immediate action to amend the Code of Civil Procedure, 1911 for the purposes hereinafter appearing;

NOW THEREFOHE, in exercis of the powers -- conferred by sub-section (1) of section 31 of the Government of Mysore Act, 1940;

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Provided that such State has been recognised by His Highness the Maharaja:

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial -- notice of the fact that a foreign State has or has not been recognised by His Highness the Maharaja."

Persons specially appointed by Govt. to prosecute or defend for Princes or Chiefs.

"85.(1) Persons specially appointed by order of the Government at the request of any State or Sovereign Prince or Ruling Chief and whether residing within or without Mysore, or at the request of any person competent, in the opinion of the Government, to act on behalf of such

State, Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such State, Prince or Chief.

(2) An appointment under this section may be made for the purpose of specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prodecute or defend on behalf of the State, Prince or Chief.

(3) A person appointed under this section may authorise or appoint persons to make -- appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

Suits against Princes, Chiefs ambassadors and envoys.

86. (1) Any such Prince or Chief and any -- ambassador or envoy or representative of a foreign State may, with the consent of the Government, certified by the signature of a Secretary to the Government, but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy or representative may be sued; but it shall not be given unless it appears to the Government that the Prince, Chief, ambassador or envoy or representative--

(a) has instituted a suit in the Court against the person desiring to sue him,

or

(b) by himself or another trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy or representative shall be arrested under this Code, and, except with the consent of the Government, certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy or representative.

(4) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy or representative from whom he holds or claims to hold the property.

Style of Princes and Chiefs as parties to suits.

87. A Sovereign Prince or Ruling Chief may sue and shall be sued in the name of his State:

Provided that in giving the consent --- referred to in the foregoing section the Government may direct that any such ~~xxxx~~ Prince or Chief, ~~xxxxxxxxx~~ shall be sued in the name of an agent or in any other name."

The Code of Civil Procedure (Amendment) Bill.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1911, for the purpose hereinafter appearing;

It is hereby enacted as follows:-

Short Title and commencement.

(i) This Act may be called the Code of Civil Procedure (Amendment) Act, 194

(ii) It shall come into force at once.

Insertion of new sections in Act III of 1911.

2. After section 82 of the Code of Civil Procedure, 1911, the following new sections shall be inserted, namely--

Government of India may

"84. The Government of India may sue in any Court of Mysore:

Provided that the object of the suit is to enforce a private right vested in the Government of India or in any officer of the Government of India in his public capacity.

with Bill

The Code of Civil Procedure (Amendment) Bill.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

Short Title and commencement.

1. (i) This Act may be called the Code of Civil Procedure (Amendment) Act, 194

(ii) It shall come into force at once.

Insertion of new sections in Act III of 1911.

2. After section 82 of the Code of Civil Procedure, 1911, the following new sections shall be inserted, namely--

Government of India may sue.

"84. The Government of India may sue in any Court of Mysore:

Provided that the object of the suit is to enforce a private right vested in the Government of India or in any officer of the Government of India in his public capacity.

Persons specially appointed by Government to prosecute or defend for Government of India.

85. (1) Persons specially appointed by order of the Government at the request of the Government of India and whether residing within or without Mysore, or at the request of any person competent, in the opinion of the Government, to act on behalf of the Government of India, to prosecute or defend any suit on its behalf, shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government of India.

(2) An appointment under this section may shall be made for the purpose of a specified suit or of several specified suits, or for the purposes of all such suits as it may from time

to time be necessary to prosecute or defend on behalf of the Government of India.

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any such suit or suits as if he was himself a party thereto.

Suits against Government of India.

86. (1) The Government of India may with the consent of the Government, certified by the signature of a Secretary to the Government, but not without such consent, be sued in any competent court.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Government of India may be sued; but it shall not be given unless it appears to the Government that the Government of India:-

(a) has instituted a suit in the Court against the person desiring to sue it, or

(b) by itself or another trades within the local limits of the jurisdiction of the Court, or;

(c) is in possession of immovable property situate within these limits and is to be sued with reference to such property or for money charged thereon;

(3) Except with the consent of the Government certified as aforesaid, no decree shall be executed against the property of the Government of India.

(~~iv~~ 4) A person may as a tenant of immovable property sue, without such consent as is mentioned in this section, the Government of India if he holds or claims to hold the property from that Government.

Style of Government of India as party to suits.

87. The Government of India may sue and shall be sued in its own name:

Provided that, in giving the consent referred to in the foregoing section, the Government may direct that the Government of India shall be sued in the name of an agent or in any other name."

7. Statement of principles of the Code of Civil Procedure (Amendment) Bill.

The SECRETARY to GOVERNMENT, LAW DEPARTMENT (Mr. H.V. Narayana Rao) explained the general principles of the Bill as follows:--

Mr. KADIDAL MANJAPPA GOWDA enquired whether there were any difficulties in the way of the Government of Mysore filing suits in British India if and when necessary. If there were any, he suggested that opportunity might be taken to overcome those difficulties also.

Mr. H.V. NARAYANA RAO replied that that had been separately provided for.

Mr. Nawab SHERKHAN referred to clause 86 and enquired why if subjects of Mysore State wanted to sue the Government of India in a Mysore Court, there should be the restriction of a certificate issued by a Secretary of the India Government, while as per clause 84 if, the Government of India could resort to any Court in Mysore without any such restriction.

The PRESIDENT explained that 'Government' in line 2 of clause 86(1) meant the Government of Mysore.

Mr. B.S. CHANDRASEKHARA RAO pointed out that any subject of the Mysore State could sue the Government of Mysore without having to obtain a certificate. But according to the bill, a certificate had to be obtained from a Secretary to the Government of India before a suit against that Government was filed. This would be ridiculous procedure. He thought that a mere notice, as in all other suits, ought to be quite enough. Nowhere in the world was it the practice to take the consent of a defendant before a suit was filed against him.

Mr. K. CHENGALARAYA REDDY did not believe that full reciprocity between the two Governments had been provided for in the Bill. Because, while the Government of India could sue in any Court of Mysore without the consent of the Government of Mysore, subjects of the Mysore State

could not sue Government of India even in a Mysore Court, without such consent.

The PRESIDENT explained that the provision in the British Indian Civil Procedure Code exactly corresponded to the provision as now proposed. He added that the subjects of Indian States, recognised as such by the Governor-General, could sue without any further consent. In other words the right to sue was there provided the status of the individual was recognised.

Mr. K. CHENGALARAYA REDDY asked whether a certificate was necessary if Government of Mysore wanted to sue any one in British India with a view to enforce their private right.

Mr. A.V. RAMANATHAN replied in the negative.

Mr. K. CHENGALARAYA REDDY agreed that in that case there was a sufficient measure of reciprocity. But even then he was of opinion that this must be made clear in the Act itself. He then asked whether a private party in British India should, before suing the Government of Mysore, take the consent of the Government of Mysore or not.

The PRESIDENT replied that if the suit was in British India, he must obtain permission of the British Indian Government.

Mr. A.V. RAMANATHAN explained that the whole thing went on the basis that the provisions were identical in Mysore and in British India. If it was not so, Government would either modify the provisions of the Bill similarly or take up with the Government of India the point raised by Mr. Chengalaraya Reddy.

Mr. KADIDAL MANJAPPA GOWDA referred to the possibility of a British Indian subject having cause of action against a Mysore subject who owned no business or other property in Mysore State, and enquired what was the remedy open to the former in such a case.

The PRESIDENT replied that in such cases probably there might be no cause of action at all.

Mr. KADIDAL MANJAPPA GOWDA enquired what remedy was open if a subject of Mysore State had cause of action against a British Indian subject who did not possess immovable property in Mysore or own any business within the State.

The PRESIDENT explained that if there was no property there was no remedy at all. No remedy which already existed was going to be taken away. On the other hand a new remedy was going to be provided now.

Mr. T.S. RAJAGOPALA IYENGAR thought that sufficient reciprocity was not going to be provided even under the amended Act. For, while a Mysore subject could sue the Government of Mysore after merely issuing a notice and waiting for some time, he could not do so against the Government of India because a special certificate was going to be insisted upon.

The PRESIDENT stated that otherwise the suit might be a long-drawn affair as questions of jurisdiction might be raised. The point to be borne in mind was that the Government of India had to enter into certain contracts or agreements in connection with certain industrial undertakings , e.g., the Air Craft Co., in which they had a share. For that reason they had suggested amendment of the law. Government had been advised that even without the amendment, the Government of India could exercise the right.

It was only by way of abundant caution that Government were trying to make things clearer. After all no prestiege was involved and no right was going to be sacrificed by amending the Act as now proposed.

Mr. T.S. RAJAGOPALA IYENGAR said that in that case the amending bill was altogether superfluous. He was personally of the opinion that if in the case of suits against the Government of India filed in a competent court in Mysore, permission of the Government of India was made compulsory, the same restriction should also apply to suits filed by the ~~xxxxxxxxx~~ Government of India or by British Indian subjects in Mysore Courts. Otherwise, he said, Section 84 and 86 would not be similar.

The PRESIDENT however did not agree with the member.

Mr. A.V. RANGANATHAN explained that even now, where a private individual wanted to sue a foreign Government, permission of the local Government was necessary. That was a recognised principle and there was nothing new in it.

The PRESIDENT said that members did not appear to have anything more to say about the Bill. It was after all a formal Bill and he hoped that the House would have no objection to its passage.

The general principles of the Bill were then put to vote and passed unanimously.

THE CODE OF CIVIL PROCEDURE (amendment) BILL

Statement of principles.

The question arose recently ~~wix~~ whether, in the absence of provisions in the Mysore Code of Civil Procedure corresponding to section 84 of the British Indian Code, the Government of India had, in Mysore, the right of suit to enforce a private right. In order to set at rest possible doubts in the matter, it ~~has been~~ to considered expedient to make provision in this behalf, in the Mysore C.P.C., and also ~~to introduce corresponding provisions relating~~ in regard to the right of suits against ~~such~~ that Government in Mysore courts, ~~similar to those to be found in the British Indian Code~~ on the basis of similar law that is contained in the British Indian Code. The present bill is intended for this purpose.

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The War Donations and Investments (Companies) Bill.

A Bill to enable companies in Mysore to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war.

Whereas it is expedient to enable companies in Mysore to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war;

And whereas it is also expedient to remove doubts as to the legality of such donations and investments where already made; It is hereby enacted as follows:—

Short title.

1. This Act may be called the War Donations and Investments (Companies) Act, 194 .

Interpretation.

2. In this Act "Government loan" includes a loan floated by the Government of the United Kingdom or by the Government of India.

Power of Companies to make donations and investments.

3. Any company formed and registered under the Mysore Companies Act, 1938, or under the Mysore Companies Act, 1917, or under the Mysore Companies Act, 1895, may, notwithstanding anything contained in the Mysore Companies Act, 1938, and notwithstanding that the Memorandum of Association or the Articles of Association of the Company do not enable it so to do, by special resolution authorise the making of a donation from the Company's assets to a public fund formed, or the making of an investment of the Company's assets in a Government loan floated, for the purpose of assisting the prosecution of the present war.

Validation of donations and investments already made.

4. Any donation to a public fund formed, and any investment in a Government loan floated, for the purpose of assisting the prosecution of the war made by any company to which this Act applies between the 3rd day of September 1939 and the commencement of the Act shall be as valid in all respects as if it had been made in accordance with the provisions of section 3 and after the commencement of this Act.

Decision of doubts.

5. If any question arises whether for the purposes of this Act a loan is a Government loan floated for the purpose of assisting the prosecution of the present war or whether a fund is a public fund formed for the purpose of assisting the prosecution of the present war, the question shall be decided by the Government, whose decision shall be final.

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7. THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Statement of Principles.

The question arose recently whether, in the absence of provisions in the Mysore Code of Civil Procedure corresponding to section 84 of the British Indian Code, the Government of India had, in Mysore, the right of suit to enforce a private right. In order to set at rest possible doubts in the matter, it is considered expedient to make provisions in the Mysore Code of Civil Procedure in this

behalf and also in regard to filing of suits against that Government in Mysore Courts similar to what is contained in the British Indian Code. The present Bill is intended for this purpose.

The Code of Civil Procedure (Amendment) Bill.

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (i) This Act may be called the Code of Civil Procedure (amendment) Act, 194 .

(ii) It shall come into force at once.

Insertion of new sections in Act III of 1911.

2. After section 82 of the Code of Civil Procedure, 1911, the following new sections shall be inserted, namely:—

Government of India may sue.

"84. The Government of India may sue in any Court of Mysore:

Provided that the object of the suit is to enforce a private right vested in the Government of India or in any officer of the Government of India in his public capacity.

Persons specially appointed by Government to prosecute or defend for Government of India.

85. (1) Persons specially appointed by order of the Government at the request of the Government of India and whether residing within or without Mysore, or at the request of any person competent, in the opinion of the Government, to act on behalf of the Government of India, to prosecute or defend any suit on its behalf, shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government of India.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purposes of all such suits as it may, from time to time, be necessary to prosecute or defend on behalf of the Government of India.

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any suit or suits as if he were himself a party thereto.

Suits against Government of India.

86. (1) The Government of India may, with the consent of the Government, certified by the signature of a Secretary to the Government, but not without such consent, be sued in any competent Court of Mysore.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Government of India may be sued; but it shall not be given unless it appears to the Government that the Government of India—

(*a*) has instituted a suit in the Court against the person desiring to sue it, or

(*b*) by itself or another trades within the local limits of jurisdiction of the Court, or

(*c*) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) Except with the consent of the Government certified as aforesaid, no decree shall be executed against the property of the Government of India.

(4) A person may, as a tenant of immovable property, sue, without such consent as is mentioned in this section, the Government of India if he holds or claims to hold the property from that Government.

87. The Government of India may sue and shall be sued in its own name : Style of Government of India as party to suits.

Provided that in giving the consent referred to in the foregoing section, the Government may direct that the Government of India shall be sued in the name of an agent or in any other name ".

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8. BILL TO AMEND THE MYSORE RAILWAYS ACT, IV OF 1894.

Statement of Principles.

Sections 68, 112 and 113 of the Indian Railways Act, 1890, relating to persons travelling without tickets or passes, etc., have been amended by the Indian Railways (Amendment) Act No. IV of 1941, which having received the assent of the Governor General on the 17th March 1941, is now the law in British India.

2. This amendment is operative on the Bangalore-Haribar and Yesvantapur-Hindupur (frontier) sections, the jurisdiction over which rests with the Imperial Government.

3. In regard to the other sections of the Mysore State Railway, over which the jurisdiction rests with the Mysore Government, corresponding sections of the Mysore Railways Act, *viz.*, 52, 94 and 95 are proposed to be amended so as to bring them in line with the corresponding sections of the British Indian Act, as it is considered desirable to have uniform laws on all the sections of the Railway in the interests of Railway Administration, and thus check ticketless travel.

Mysore Railways Act (Amendment) Bill.

WHEREAS it is expedient further to amend the Mysore Railways Act, 1894, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Mysore Railways (Amendment) Act, 194 . Short tittle and commencement.

2. (1) Section 52 of the Mysore Railways Act, 1894 (hereinafter referred to as the said Act), shall be re-numbered as sub-section (1) of that section and in the said section as so re-numbered, after the word "enter", the words "or remain in" shall be inserted.

(2) To the said section as so re-numbered and amended, the following sub-section shall be added, namely :—

"(2) A railway servant when granting the permission referred to in sub-section (1) shall ordinarily, if empowered in this behalf by the railway administration, grant to the passenger a certificate that the passenger has been permitted to travel in such carriage upon condition that he subsequently pays the fare payable for the distance to be travelled."

3. (1) Section 94 of the said Act shall be re-numbered as sub-section (1) of that section and in the sub-section as so re-numbered— Amendment of Section 94, Act IV of 1894.

(*a*) in clause (*a*), for the words and figures "in contravention of section 52, any carriage on a railway

the words and figures "or remains in any carriage on a railway in contravention of section 52" shall be substituted; and

(*b*) after the words "shall be punished", the words "with imprisonment for a term which may extend to three months or" shall be inserted.

(2) To the said section as so re-numbered and amended, the following sub-section shall be added, namely:—

"(2) Notwithstanding anything contained in section 65 of the Indian Penal Code, as in force in Mysore, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months."

Amendment of Section 95, Act IV of 1894.

In section 95 of the said Act,—

(*a*) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The excess charge referred to in sub-section (1) and sub-section (2) shall be a sum equivalent to the amount otherwise payable under those sub-sections, or eight annas, whichever is greater:

Provided that where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, the excess charge shall be one-sixth of the excess charge otherwise payable calculated to the nearest anna, or two annas, whichever is greater:

Provided further that if the passenger has with him a certificate granted under sub-section (2) of section 52, no excess charge shall be payable";

(*b*) in sub-section (4), for the words beginning with "the sum payable by him shall" and ending with "be paid to the railway administration", the following words shall be substituted, namely:—

"Any railway servant appointed by the railway administration in this behalf may apply to any Magistrate of the first or second class for the recovery of the sum payable as if it were fine, and the Magistrate if satisfied that the sum is payable, shall order it to be so recovered, and may order that the person liable for the payment shall, in default of payment, suffer imprisonment of either description for a term which may extend to one month. Any sum recovered under this sub-section shall, as it is recovered, be paid to the railway administration".

Insertion of new section 95-A in Act IV of 1894.

Powers to remove persons from railway carriage.

5. After section 95 of the said Act, the following section shall be inserted, namely:—

"95-A. Any person who, without having obtained the permission of a railway servant travels or attempts to travel in a carriage without having a proper pass or ticket with him, or in a carriage of a higher class than that for which he has obtained a pass or purchased a ticket, or in a carriage beyond the place authorised by his pass or ticket, or who, being in a carriage fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 53, may be removed from the carriage by any railway servant authorised by the railway administration in this behalf or by any other person whom such railway servant may call to his aid, unless he then

MINUTES MADE BY THE JUDGES OF THE HIGH COURT REGARDING THE PROPOSED INTRODUCTION OF THE BILLS TO AMEND THE CODE OF CIVIL PROCEDURE.

THE CHIEF JUSTICE.-

Two revised draft Bills have now been sent to us. One would bring into the Code of Civil Procedure only a new Section 84. The other would bring in new Sections 84, 85, 86 and 87. Both Bills are now confined to suits by or against the Government of India. I gather - but I am not quite sure - that our opinion is required only on the longer Bill.

Though I still think such a Bill is unnecessary for the purposes of the Government of India, the revised Bill is certainly in my opinion much less open to objection than the original one and in practice is not likely to lead to any difficulty.

ADL-UL-MULK MR. JUSTICE C. ABDUL GHANI.-

The present bill is a modification of the previous one, confining the right of suit to the Government of India and giving a right of suit - a restricted one - against the Government of India in a few specified cases. In view of my opinion on the previous bill, I see no objection to the proposed addition to the provisions of the Code of Civil Procedure. The term used in the British Indian Code is "Secretary of State for India in Council" when a suit by or against Government is contemplated. Instead of the words "Government of India", it is perhaps better to use the words "Secretary of State for India in Council".

RAJADHARMAPRASAKTA MR. JUSTICE A.R. NAGESVARA IYER.-

I agree with the Chief Justice. Section 86 seems to require some modification. The intention obviously is to provide for suits being filed against the Government of India in the Mysore Courts. If so, instead of the words 'in any competent Court' the words used in Section 84 viz., 'in any Court of Mysore' may be adopted, or the words 'of Mysore' may be added after 'competent Court'.

MR. JUSTICE T. SINGARAVELU MUDALIAR.-

The shorter bill would give the Governmen of India the right to sue without the liability to be sued. The longer bill however provides for both. In both the bills the provision has perhaps to be made for the Secretary of State for India in Council to sue or be sued as in Section 79 of the British Indian Code. Again, if the Government of India is to be sued, provision has to be made for the notice provided for in Section 80 of the British Indian Code. Further, I do not see the necessity for the words " or at the request of any person competent, in the opinion of Government, to act on behalf of the Government of India" in Section 85 of the Bill.

MR. JUSTICE S. VENKATA RANGA IYENGAR.-

I take it that our opinion is required only on the longer Bill, which would bring in new sections 84, 85, 86 and 87 to the Code of Civil Procedure that is in force in Mysore. The words "or at the request of any person competent, in the opinion of Government to act on behalf of the Government of India", in section 85(1) do not appear to be necessary, as the right of suit under section 8

and the liability to be sued under section 86 are confined only to the Government of India, and therefore it is only, at the request of Government of India, that the Government of Mysore may by order specially appoint persons to prosecute or defend suits on behalf of the Government of India. In section 85(2), for the word "shall" in the sentence "an appointment under this section shall be made" the word "may" may be substituted. In other respects the draft Bill appears to be all right.

The expression "Government of India" used in the draft Bill appears to me to be appropriate and I am not in favour of substituting "Secretary of State for India in Council" for the expression "Government of India". In this connection I may just state that section 79 of the British Indian Code, which deals with the form of suits by or against the Crown, is based on the Government of India Act, with which we have nothing to do. Old section 79 of the British Indian Code, according to which, suits by or against the Government had to be instituted by or against the Secretary of State for India in Council, was amended by the Government of India (Adaptation of Indian Laws) Order, 1937, the change being necessitated by the Government of India Act of 1935. According to section 79 of the British Indian Code as amended, the form of the suit by or against the Crown depends on the question whether the suit is by or against the Central Government, or Provincial Government or Crown Representative. In the first class of suits, the authority to be named as plaintiff or defendant will

be the Governor-General in Council; in the second class, the Province; and in the third class, the Secretary of State. It is unnecessary for us to classify suits in that manner, inasmuch as it is only the Government of India that has the right to sue and be sued in our Courts according to the draft Bill and the provision in section 87 of the draft Bill that the Government of India may sue and shall be sued in its own name appears to be all right, in the circumstances. What is meant by the expression "The Government of India" appears to me to be the Central Government.

Nor does it appear to me to be necessary to make any provision in our Code of Civil Procedure for the notice provided for in section 80 of the British Indian Code. It is no doubt true that, in the Courts in British India, no suit can be filed against the Crown until the expiration of two months next after notice in writing has been delivered in accordance with section 80 of the British Indian Code. It does not necessarily follow that the Government of India is entitled to such a notice, if suits are to be filed against it in our Courts. It is only with the consent of the Government of Mysore, certified by the signature of a Secretary to Government, that under section 86 the Government of India may be sued in our Courts. Perhaps, if, at the time of according consent, the Government of Mysore thinks that in any case a notice to the Government of India is necessary before the suit could be filed against it, the Government of Mysore, may, in proper cases, before granting the certificate of consent under

section 86 of the Code, call upon the party who intends filing a suit against the Government of India to issue a notice to the Government of India. I do not think that any legislative provision is necessary for that purpose.

MR. JUSTICE C. SUBRAHMANYA AIYAR.-

In view of what I have already stated, I am in favour of introducing all the four sections 84 to 87 into our Civil Procedure Code. There can be no objection to the modified bill that has now been sent for opinion, since the right to sue and the liability to be sued are limited to the Government of India. The bill is suitable, but there are one or two drafting errors.

In sub section(2) of Section 85, the word "shall" after "an appointment under this section" is a mistake for "may". In the Indian Code the word used is "may".

Sub section (4) of Section (86) in the bill which is a literal substitution of the corresponding sub section in the Indian Code does not read well. In the Indian Code, the words "from whom he holds or claims to hold property" indicates the particular Prince, chief, ambassador or envoy, i.e. the land-lord who may be sued. But in the bill as drafted, it reads as if two conditions should be satisfied, viz., that the person suing should be a tenant of immovable property and also that he should hold or claim to hold the property from the Government of India, though they really form only one condition. I suggest the following form for this subsection:-

"(4) A person may, as a tenant holding or claiming to hold immovable property from the Government of India, sue, without such consent as is mentioned in this section, that Government".

The term "Government of India" appears to be suitable. It is not necessary to change it into the "Secretary of State for India". Even in Section 87 of the Indian Code, the suit by or against a Sovereign is to be in the name of his State.

I think the words "or at the request of any person competent, in the opinion of the Government, to act on behalf of the Government of India" in sub-section (1) of Section 85 may remain as the idea appears to be to enable the "Political agent" in Mysore or a Provincial Government, if the suit is at the instance of such Government, to request for the appointment of a recognised agent.

Comes

T. Chandrasekhara
Reg. Char